



## INTERIOR BOARD OF INDIAN APPEALS

Estate of George Mortimer Cummings

2 IBIA 112 (12/11/1973)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF GEORGE MORTIMER CUMMINGS

(Deceased Cheyenne River Allottee 3484)

IBIA 73-17

Decided December 11, 1973

Petition to reopen.

Granted.

Indian Probate: Reopening: Waiver of Time Limitation

To avoid perpetuating a manifest injustice, a petition to reopen filed more than three years after the final determination of the heirs will be granted where compelling proof is shown that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

APPEARANCES: Mable C. Marrs and Joan M. Hamilton, pro se.

OPINION BY MR. WILSON

Pursuant to the Board's Preliminary Order on Petition for Reopening, dated January 31, 1972, Docket No. 72-6, a hearing in the Estate of George Mortimer Cummings was duly held and completed at Portland, Oregon, on December 12, 1972.

From the evidence adduced at said hearing the petitioners, Mable C. Marrs and Joan M. Hamilton, have clearly established, and we find (1) that they were not dilatory in asserting their rights in and to the estate herein, (2) that they are related to the decedent in such a degree so as to entitle them to share in his estate as heirs under the South Dakota laws of Descent and Distribution, (3) that the Order Determining Heirs entered in this estate on July 17, 1967, resulted from a mistake of such a nature so as to warrant reopening and correction, to avoid perpetuation of a manifest injustice, (4) that none of the heirs as originally determined has entered any objection to the reopening of the estate herein, and (5) that there are no existing intervening rights which would jeopardize the title to the lands involved.

In view of the foregoing circumstances, the estate herein should be reopened and the Order Determining Heirs, dated July 17,

1967, modified and corrected to (1) include the petitioners as heirs therein and (2) to reapportion the shares of the heirs in the estate.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the estate of George Mortimer Cummings, Cheyenne River Allottee No. 3484, IS HEREBY REOPENED and the Order Determining Heirs, dated July 17, 1967, IS HEREBY AMENDED, CORRECTED AND MODIFIED to redetermine the decedent's heirs and to reapportion their shares as follows, to wit:

Ronald Crain Cummings, Cheyenne River nonenrolled,	son,	1/4
Shelly Marie Cummings, Cheyenne River nonenrolled,	daughter,	1/4
Mable Carmen Marrs, Cheyenne River nonenrolled,	daughter,	1/4
Joan Marie Hamilton, Cheyenne River nonenrolled,	daughter,	1/4

This decision is final for the Department.

Done at the city of Arlington, Virginia.

//original signed

Alexander H. Wilson, Member

I concur:

//original signed

Mitchell J. Sabagh, Member